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POTENSI BERNAS SDN BHD

v.

DATU BADARUDDIN DATU MUSTAPHA

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HIGH COURT SABAH & SARAWAK, LABUAN
ABDUL RAHMAN SEBLI JC
[ORIGINATING SUMMONS NO: L24-02-2008]
5 FEBRUARY 2009

C ***LAND LAW:*** *Injunction - Order of injunction - Injunction restraining defendant from dealing with property in Labuan - Order issued by Syariah High Court in Sabah - Whether jurisdiction of Syariah High Courts of Sabah confined to state of Sabah – Whether Federal Territory of Labuan beyond jurisdictional reach of Syariah High Court - Whether*
D *Syariah High Court had jurisdiction to grant injunction order - Whether injunction restraining defendant manifestly unjust to non-Muslim shareholders - Whether injunction null and void*

CONSTITUTIONAL LAW: *Courts - Jurisdiction - Conflict of*
E *jurisdiction - Civil and Syariah Courts - Whether jurisdiction of Syariah High Courts of Sabah confined to state of Sabah – Whether Federal Territory of Labuan beyond jurisdictional reach of Syariah High Court - Whether Syariah High Court had jurisdiction to grant injunction order - Whether injunction restraining defendant manifestly unjust to non-Muslim*
F *shareholders - Whether injunction null and void*

The plaintiff, a company incorporated in Malaysia under the Companies Act 1965, was the lawful and registered owner of a property ('the property'), an island known as Pulau Daat located in the Federal Territory of Labuan and registered in the name of
G Kudat Properties Sdn Bhd ('Kudat Properties'). The property had earlier been charged by Kudat Properties to Bumiputera Commerce Bank Berhad and the charge was subsequently transferred to Danaharta Urus Sdn Bhd. Kudat Properties went into liquidation and the property was sold to the plaintiff. The
H plaintiff had fully paid the purchase price and the property was transferred to the plaintiff on 4 August 2005. On 21 August 2007 the defendant caused a caveat to be registered against the document of title to the property but the plaintiff only came to know of the caveat sometime in September 2007. The plaintiff
I immediately instructed its solicitors to apply for its removal. The caveat was removed after a land enquiry and the parties were

notified. In the meantime and unknown to the plaintiff, the defendant had on 16 November 2007 caused to be registered against the land registry copy of the document of title to the property an *ex parte* injunction order ('the injunction order') issued by the Syariah High Court, Kota Kinabalu ('the Syariah High Court') on 25 October 2007. It was apparent that there was an ongoing dispute between the two family members of the late Tun Datu Mustapha Datu Harun, namely the defendant and Datu Amir Kahar in the Syariah High Court over the properties he left behind. The property in the present application was one of them. The plaintiff was never served with the injunction order nor was it ever made a party to any proceeding in the Syariah High Court which issued the injunction order. Hence, the plaintiff presented the application herein for, *inter alia*, a declaration that the said *ex parte* order was null and void. The issue that arose was whether the Syariah High Court had jurisdiction to issue the injunction order in so far as it affected the plaintiff's interest in the property.

Held (allowing plaintiff's application):

(1) On a plain reading of ss. 4(2) and 11(1) of the Sabah Syariah Court Enactment 2004 ('the Sabah Syariah Enactment'), it was clear that the jurisdiction of the Syariah High Courts of Sabah was confined to the State of Sabah. The Federal Territory of Labuan, not being part of Sabah, was therefore beyond the jurisdictional reach of the Syariah High Court which issued the injunction order. The Civil Court was only precluded from interfering if the Syariah Court had acted within its jurisdiction. It was not a blanket prohibition. Herein, the Syariah High Court had no jurisdiction to grant the injunction order as the property was located outside the State of Sabah and involved a non-Muslim owner. The jurisdiction of the Syariah Courts was limited only to Muslims *(Latifah bte Mat Zin v. Rosmawati bte Sharibun)*. This was also enacted in s. 11(3)(b) of the Sabah Syariah Enactment. (paras 14 & 15)

(2) The plaintiff company consisted of both Muslim and non-Muslim shareholders. The defendant's contention that the Syariah High Court had jurisdiction over the plaintiff based solely on the fact that Datu Amir Kahar, a shareholder in the company, was a Muslim, was untenable. Clearly the property was not a personal property of Datu Amir Kahar. It was not

A even registered in his name. It belonged to the company, which, being a creature of statute did not profess any religion. Only natural persons can profess a religion. Therefore the injunction restraining the defendant from dealing with the property was not only manifestly unjust to the non- Muslim
B shareholders of the plaintiff but was also null and void for want of jurisdiction. (para 16)

Case(s) referred to:
Latifah Mat Zin v. Rosmawati Sharibun & Anor [2007] 5 CLJ 253 FC ***(refd)***
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Legislation referred to:
Federal Constitution, arts. 1(4), 121(1A)
Federal Territory of Labuan Enactment 1984, ss. 2(1), 3
Sabah Syariah Court Enactment 2004, ss. 4(2), 11(1), (3)(b)
D Syariah Civil Procedure No 10 of 2004, s. 200(1)

For the plaintiff - Chung Jiun Dau; M/s Chung & Associates
For the defendant - Jelani Hamdan; M/s Jelani Hamdan & Co

Reported by Suhainah Wahiduddin
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JUDGMENT

Abdul Rahman Sebli JC:
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[1] The plaintiff, a company incorporated in Malaysia under the Companies Act 1965 is the lawful and registered owner of a property held under CL 205000498 ("the property") which is actually an island known as Pulau Daat located in the Federal
G Territory of Labuan and registered in the name of Kudat Properties Sdn Bhd. ("Kudat Properties"). The property had earlier been charged by Kudat Properties to Bumiputera Commerce Bank Berhad and the charge was subsequently transferred to Danaharta Urus Sdn Bhd. Kudat properties went
H into liquidation and the property was sold to the plaintiff by the court appointed liquidator, one John Liaw Chee Shing.

[2] The plaintiff has fully paid the purchase price and the property was transferred to the plaintiff on 4 August 2005. On 21 August 2007 the defendant caused a caveat to be registered
I against the document of title to the property but the plaintiff only

came to know of the caveat sometime in September 2007. The plaintiff immediately instructed its solicitors to apply for its removal. The caveat was removed by the Assistant Collector of Land Revenue, Labuan after a land enquiry and the parties were notified of the removal by a letter dated 13 March 2008.

[3] In the meantime and unknown to the plaintiff the defendant had on 16 November 2007 caused to be registered against the land registry copy of the document of title to the property an *ex parte* injunction order dated 7 November 2007 ("the injunction order") issued by the Syariah High Court, Kota Kinabalu ("the Syariah High Court") on 25 October 2007.

[4] It is apparent that there is an ongoing dispute between two family members of the late Tun Datu Mustapha bin Datu Harun ("Tun Datu Mustapha"), namely the defendant and Datu Amir Kahar bin Tun Datu Mustapha ("Datu Amir Kahar") in the Syariah High Court over the properties he left behind. The property in the present application is one of them. The relevant parts of the the *ex parte* injunction order read as follows:

Perintah Mahkamah

Kes ini didengar secara ex parte pada hari ini dengan dihadiri oleh Peguam Pemohon **En. Jelani bin Hamdan** dari Dr. Yaacob & Ismail.

Atas Permohonan Datu Badaruddin bin Tun Datu Mustapha (No. K/p: 380606-71-5084/H0000036) di Mahkamah ini pada 23 Ogos 2007 dan setelah meneliti Afidavit Sokongan Pemohon bertarikh 23 Ogos 2007 dan setelah mendengar penghujahan Peguam Syarie Pemohon;

Maka Adalah Dengan Ini Diperintahkan bahawa:

1. Perintah penahanan (Injunksi) ke atas Para Waris, Liquidator kepada Kudat Properties Sdn. Bhd (En. John Liaw Chee Shing No. K/p: 460718- 12-5003) atau mana-mana pihak lain agar tidak menjual dan/atau memindahkan harta alih atau tak alih dan syarikat-syarikat berikut, sehingga Perintah dikeluarkan oleh Mahkamah Yang Mulia ini:

2. Harta alih dan tak alih dan/atau syarikat-syarikat yang dimaksudkan termasuklah:

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i) Kudat Properties Sdn. Bhd (No. Pendaftaran Syarikat: 016228-P);

ii) Utusan Kinabalu Company Sdn. Bhd (No. Pendaftaran: 23539-X);

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iii) Hartanah CL205000498 yang didaftarkan atas nama Syarikat Potensi Bernas Sdn. (No. Pendaftaran: 569799-M) yang merujuk kepada sebuah pulau dikenali sebagai Pulau Daat, di Wilayah Persekutuan Labuan;

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iv) Kinabalu Air Sdn, Bhd (No. Pendaftaran: 192113-D); dan

v) Tiga (3) lot hartanah di atas hakmilik TL 017502724, TL 017502715 dan TL 017502706 yang terletak di Tanjung Aru, Kota Kinabalu Sabah.

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3. Perintah Pengisytiharan ke atas penjualan, pelupusan, pindahmilik dan/atau sebarang transaksi yang telah dibuat ke atas harta-harta tersebut atau atas nama Allahyarham Tun Datu Mustapha bin Datu Harun sendiri atau atas nama syarikat-syarikat yang mana beliau adalah pemegang

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sahamnya dan/atau mempunyai kepentingan terhadap harta-harta tersebut, memandangkan kes induk iaitu permohonan no: PA-17-01-1998 mengenai Pembahagian Harta Pusaka Si Mati masih berjalan dan belum diputuskan oleh Mahkamah Tinggi Syariah Kota Kinabalu.

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4. Perintah ini berkuatkuasa serta-merta sehingga ada perintah lain dikeluarkan oleh Mahkamah ini atau sehingga Penghakiman Kes Induk No; PA-17-01-1998 diputuskan.

Di Meterai dan ditandatangani oleh Mahkamah Yang Mulia ini pada 07 November 2007.

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Sgd
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Pendaftar/Hakim
Mahkamah Tinggi Syariah
Kota Kinabalu

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[5] The property involved in the present application is the property listed in para 2 (iii) of the injunction order. The plaintiff only became aware of the injunction order when the Assistant Controller of Land Revenue, Labuan verbally informed the plaintiff

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of its existence on 29 January 2008. The plaintiff was never

served with the injunction order nor was it ever made a party to any proceeding in the Syariah High Court which issued the injunction order. The plaintiff was also never served with any summons, application or document in respect of any proceeding in the Syariah High Court.

[6] The plaintiff's present application is for the following reliefs:

1) A declaration that the *ex parte* order dated 7 November 2007 issued by the Syariah High Court, Kota Kinabalu on 25 October 2007 and registered against the land held under document of title CG 205000498 as memorial number 0018003B on 16 November 2007 is null and void;

2) A declaration that the *ex parte* order dated 7 November 2007 issued by the Syariah High Court, Kota Kinabalu on 25 October 2007 and registered against the land held under document of title CG 205000498 as memorial number 0018003B on 16 November 2007 has no effect on the plaintiff or the land held under document of title CG 205000498;

3) A declaration that the plaintiff and the land held under document of title CG 205000498 are not within the jurisdiction of the Syariah High Court, Kota Kinabalu;

4) A declaration that the registration of the *ex parte* order dated 7 November 2007 issued by the Syariah High Court, Kota Kinabalu on 25 October 2007 and registered against the land held under document of title CG 205000498 is null and void;

5) A direction that the registration of the *ex parte* order dated 7 November 2007 issued by the Syariah High Court, Kota Kinabalu on 25 October 2007 and registered against the land held under document of title CG 205000498 as memorial number 0018003B on 16 November 2007 be removed and cancelled.

[7] There is no dispute that the property is located in the Federal Territory of Labuan and registered in the name of the plaintiff company. The issue is whether the Syariah High Court had jurisdiction to issue the injunction order in so far as it affects the plaintiff's interest in the property. On behalf of the defendant it was submitted that s. 200 of the Syariah Civil Procedure No.

A 10 of 2004 ("the Syariah Civil Procedure") gave power to the Syariah High Court to grant the injunction order. Section 200(1) of the Syariah Civil Procedure provides as follows:

> Upon an application of any party in any cause or matter, before
B or after the trial of the cause or matter, the Court may grant an injunction whether or not the claim for the injunction has been included in the summons, counter claim or third party notice, as the case may be.

[8] The plaintiff on the other hand contended that the Syariah
C High Court only has jurisdiction within the State of Sabah and not beyond. It was submitted that the Federal Territory of Labuan is not part of the State of Sabah and therefore the Syariah High Court had no jurisdiction to issue the injunction order. Reliance was placed on art. 1(4) of the Federal
D Constitution which provides that the State of Sabah shall exclude the Federal Territory of Labuan. Further, the State Legislative Assembly of Sabah through s. 2(1) and s. 3 of the Federal Territory of Labuan Enactment 1984 had clearly abdicated its powers over Labuan in the following terms:

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[9] Section 2(1)

> The boundaries of the State of Sabah are hereby altered by the exclusion of the area described hereunder for the purpose of the establishment of the Federal Territory of Labuan.

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[10] Section 3

> The area referred to in section 2 shall cease to form part of the State of Sabah and the State of Sabah shall relinquish and cease to exercise any sovereignty over the said area and all power and
G jurisdiction of the Yang Di-Pertua Negeri and the Legislative Assembly of the State of Sabah in or in respect of the said area shall come to an end.

[11] The Civil and Syariah courts in Malaysia are creatures of
H statutes. As such their respective jurisdictions are derived from the enacting statutes: see *Latifah bte Mat Zin v. Rosmawati bte Sharibun* [2007] 5 CLJ 253 where Abdul Hamid Mohamad FCJ (as he then was) said at p 278:

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> The point to note here is that both courts, civil and syariah, are creatures of statutes. Both owe their existence to statutes, the Federal Constitution, the Acts of Parliament and the State Enactments. Both get their jurisdictions from statutes ie, Constitution, federal law or State law, as the case may be. So, it is to the relevant statutes that they should look to determine whether they have jurisdiction or not.

[12] The Syariah High Courts in Sabah are established pursuant to s. 4(2) of the Sabah Syariah Court Enactment 2004 ("the Sabah Syariah Enactment") which provides:

> The Yang di-Pertua Negeri may, on the recommendation of the State Chief Syar'ie Judge, by notification in the Gazette, constitute a Syariah High Court for the State of Sabah which have jurisdiction throughout the State of Sabah and may prescribe the divisions limit of jurisdiction in the State of Sabah.

[13] Section 11(1) of the Sabah Syariah Enactment further provides as follows:

> A Syariah High Court shall have jurisdiction throughout the State of Sabah and shall be presided by a Syariah High Court Judge.

[14] On a plain reading of the above provisions it is clear that the jurisdiction of the Syariah High Courts of Sabah is confined to the State of Sabah. The Federal Territory of Labuan, not being part of Sabah is therefore beyond the jurisdictional reach of the Syariah High Court which issued the injunction order. Counsel for the defendant however argued that the injunction order can be enforced in the Federal Territory of Labuan as the dispute involving the family of the late Tun Datu Mustapha is before the Syariah High Court. It was submitted that the Civil Court has no jurisdiction to hear the application as it involves a matter within the jurisdiction of the Syariah Court, citing art. 121(1A) of the Federal Constitution ("the Constitution"). I find no merit in this argument. In my view the Civil Court is only precluded from interfering if the Syariah Court had acted within its jurisdiction. It is not a blanket prohibition. In the present case it is clear that the Syariah High Court had no jurisdiction to grant the injunction order as the property is located outside the State of Sabah and involving a non Muslim owner.

A **[15]** It has been decided by the Federal Court in *Latifah bte Mat Zin, supra* that the jurisdiction of the Syariah Courts is limited only to muslims. This is also enacted in s. 11(3)(b) of the Sabah Syariah Enactment.

B **[16]** There is no dispute that the plaintiff company consists of both Muslim and non Muslim shareholders. In fact the majority shareholder is a non Muslim. The defendant's contention that the Syariah High Court has jurisdiction over the plaintiff is based solely on the fact that Datu Amir Kahar, a shareholder in the company C is a Muslim. This argument is untenable. Clearly the property is not the personal property of Datu Amir Kahar. It is not even registered in his name. It belongs to the company which, being a creature of statute does not profess any religion. Only natural persons can profess a religion. Therefore the injunction order D restraining the plaintiff from dealing with the property is not only manifestly unjust to the non Muslim shareholders of the plaintiff but is also null and void for want of jurisdiction.

[17] For reasons stated above the plaintiff's application must be E allowed in terms of the originating summons dated 18 June 2008.

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